

EXHIBIT 8

FILED UNDER SEAL

In the Matter Of:

In Re: Pork Antitrust Litigation

MICHAEL WILLIAMS, PH.D.

June 21, 2022



VOLUME 1
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

_____)
IN RE:) No. 0:18-cv-01776-JRT-HB
_____)
PORK ANTITRUST LITIGATION)
_____)
_____)

VIDEOTAPED DEPOSITION of
MICHAEL A. WILLIAMS, PH.D.
- CONDUCTED BY VIDEOCONFERENCE -
Tuesday, June 21, 2022
8:01 a.m. Pacific Daylight Time

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1 I'm getting at. Are you assuming that the
2 defendants used each of the alleged mechanisms in
3 each year of the alleged conspiracy?

4 MR. FINLEY: Objection, form, and on the
5 basis of expert stipulation.

6 A. Well, again, just coming back to the first
7 sentence in Paragraph 12, I have assumed that "For
8 the purpose of estimating overpayments, if any,
9 caused by the Defendants' alleged conspiracy," I
10 have assumed, as any damage expert must, that the
11 allegations in the complaint are true.

12 So obviously the complaint speaks for
13 itself about what the allegations are. My report
14 doesn't contain a specific statement about the
15 question you just raised.

16 But if it would be considered as part of
17 the allegations in the complaint pertaining to the
18 alleged conspiracy, then again, I have, as any
19 damage expert must, assumed for purposes of
20 calculating overpayments that those allegations
21 are correct.

22 Q. For purposes of calculating overpayments
23 in 2016, what conduct did you assume defendants
24 engaged in that impacted prices that year?

25 MR. FINLEY: Objection, lack of

1 foundation.

2 A. Yeah. So my overcharge regression doesn't
3 have a specific overcharge for 2016.

4 It has -- as you mentioned earlier, it has
5 a dummy variable that answers the question of
6 whether or not there is or is not a statistically
7 significant difference between actual prices and
8 but-for prices over the period January 2009 to
9 June 2018.

10 So my report doesn't offer a specific
11 opinion on the subject of your question.

12 Q. Your report doesn't offer a specific
13 opinion on whether there was an overcharge in 2015
14 either. Correct?

15 A. Yeah.

16 MR. FINLEY: Hold on. Objection, you may
17 have mischaracterized prior testimony.

18 A. My report does not offer different
19 overcharge estimates for different years within
20 the damages period.

21 Q. It's also true your report doesn't offer
22 an overcharge estimate for the period June of 2014
23 through June of 2018. Correct?

24 MR. FINLEY: Same objection.

25 A. It does not offer a separate estimate of

1 any alleged -- of any possible overcharge,
2 assuming any existed. It doesn't offer a specific
3 estimate of an overcharge in that time period.
4 That is correct.

5 Q. And you're not making any assumptions
6 about defendants' actual conduct between June
7 of 2014 and June of 2018 other than what's
8 specifically stated in the complaint. Correct?

9 MR. FINLEY: Objection, form.

10 A. Your question was a little vague.

11 But again, I'll just come back again to
12 the first sentence in Paragraph 12. "For the
13 purpose of estimating overpayment, if any, caused
14 by the Defendants' alleged conspiracy."

15 And that conspiracy is alleged to have
16 existed between -- at least the damages, between
17 January 2009 and June 2018.

18 And I have -- as I've said several times
19 now, I have assumed, as any damage expert must,
20 that the allegations in the complaint are true.

21 Q. Yeah. And so that's what I'm trying to
22 get at. So for 2016, just to pick a year, what
23 are you assuming the defendants did that then led
24 to the overcharge you purport to measure?

25 MR. FINLEY: Objection, asked and

1 answered, lack of foundation.

2 A. Yeah. I'm assuming that in 2016 the
3 defendants engaged in the conduct that's alleged
4 in the complaint as it relates to conduct that
5 allegedly supported the claimed conspiracy.

6 Q. Are you assuming that all decreases in sow
7 inventory between January of 2009 and June of 2018
8 were a result of the alleged conspiracy?

9 MR. FINLEY: Hold on. And objection,
10 form, also on the basis of expert stipulation.
11 This is something possibly considered, not
12 necessarily relied on.

13 A. My report doesn't offer such an opinion.
14 My report doesn't make such. It doesn't have a
15 statement about that.

16 Q. Are you assuming that all decreases in hog
17 production between January of 2009 and June
18 of 2018 were a result of the conspiracy?

19 MR. FINLEY: Same objection.

20 A. Again, the -- I mean, the complaint speaks
21 for itself. So I'm assuming that the allegations
22 in the complaint are true as it pertains to those
23 allegations that are relevant to the alleged
24 conspiracy.

25 I don't specifically recall right now if

1 that.

2 Q. How would you phrase it?

3 A. I would phrase it the way I just phrased
4 it. I would phrase it as saying that there is a
5 dummy variable that covers the period January 2009
6 through June 2018 and that the coefficient on that
7 dummy variable was minus 0.073, which implies that
8 there is a difference in -- that the percentage
9 effect over that time period is 7 percent
10 difference in production between the actual world
11 and the but-for world in the absence of the
12 alleged conspiracy.

13 Q. So you didn't like the word "average." So
14 let me make sure I understand.

15 You're not testifying or opining that the
16 average production of pork net of net exports
17 between January of 2009 and June of 2018 was
18 7 percent lower than the but-for world. Am I
19 understanding that correctly?

20 MR. FINLEY: Objection, form.

21 A. Yes. The word "average" is highly
22 inappropriate in this regard.

23 Q. And you also disagree with the word
24 "total." Right?

25 So your regression does not tell us that

1 total pork production between net of net exports
2 between January of 2009 and June 2018 was
3 7 percent lower than it would have been in the
4 but-for world. Correct?

5 MR. FINLEY: Objection, may
6 mischaracterize prior testimony.

7 A. I just -- that's not how I would phrase
8 it.

9 Q. And I believe you said your regression
10 doesn't tell us that in any particular quarter
11 within that roughly 10-year period that pork
12 production was 7 percent lower than it would have
13 been in the but-for world. Correct?

14 MR. FINLEY: Objection, form, may
15 mischaracterize prior testimony.

16 A. The production regression has a single
17 dummy variable for the time period January 2009
18 through June 2018. It does not break that period
19 up into, for example, individual years.

20 Q. Why did you choose to use a single period
21 of January '09 to June of 2018 to analyze the
22 impact of the conspiracy on production?

23 MR. FINLEY: Objection on the basis of
24 expert stip to the extent this calls for materials
25 considered but not relied on.

1 A. I think it's the appropriate -- I think
2 it's the appropriate way to test what's being
3 tested in the production regression.

4 Q. Why is it appropriate?

5 MR. FINLEY: Same objection.

6 A. It's answering the question that was posed
7 in Paragraph 144.

8 Q. If the jury wanted to know whether pork
9 production net of net exports was lower in 2017
10 than it would have been but for the conspiracy,
11 your production model would not answer that
12 question. Correct?

13 MR. FINLEY: Objection, form.

14 A. I don't think I would state it quite like
15 that.

16 There's a dummy variable that includes
17 2017. The effect is being measured over the
18 period January 2009 through June 2018.

19 As I said, there's not a specific dummy
20 variable that would include the four quarters of
21 2017 to see if there was a different effect in
22 2017.

23 Q. So that last point -- I just want to make
24 sure I understood that correctly.

25 So your production regression doesn't

1 Q. And I can't remember. I know I asked you
2 these questions about your production regression.
3 I'm drawing a blank on whether I asked as to the
4 overcharge. So apologies if we're double-dipping
5 here.

6 Did you run any sensitivity checks on the
7 overcharge regression that you report -- that you
8 disclose in your report?

9 MR. FINLEY: Sure. And so the question
10 has changed. I'll object on the basis of expert
11 stip to the extent this is calling for calculation
12 that is not shown in the report or relied upon.

13 A. So the only overcharge regression that I'm
14 showing in my report is the one shown in Table 4.

15 Q. And you're not defending this overcharge
16 report -- the overcharge regression that you
17 disclose in your report on the basis that it is
18 not sensitive to slight modifications and
19 assumptions. Is that fair?

20 MR. FINLEY: Objection, form.

21 A. I would say that what I'm relying on are
22 the analyses that I've undertaken to perform the
23 overcharge regression results. And that's -- and
24 all of the bases for that, all of the facts, all
25 of the data, all the modeling, that is all

1 disclosed in my report.

2 Q. Is your overcharge regression sensitive to
3 your decision to designate one damages period
4 covering 2009 through June 2018?

5 MR. FINLEY: Objection on the basis of the
6 expert stip.

7 A. My report only shows -- only relies on a
8 single dummy variable for that period January 2009
9 through June 2018.

10 MR. SCHWINGLER: I want to make sure the
11 record is clear on this and I'm not -- this isn't
12 an attempt to be argumentative.

13 Blaine, are you instructing him not to
14 answer my question?

15 MR. FINLEY: Well, I thought I did.

16 MR. SCHWINGLER: You objected. I didn't
17 hear an instruction. He did not answer my
18 question. I want to make sure the record is clear
19 as to why.

20 MR. FINLEY: What's the pending question?

21 MR. SCHWINGLER: Let me do the question
22 again. This isn't an attempt to -- this isn't
23 rhetorical. I just want to make sure the
24 transcript is clear.

25 So I need to scroll back up -- here we go.

1 So my question is, "Is your overcharge
2 regression sensitive to your decision to designate
3 one damages period covering 2009 through
4 June 2018?"

5 MR. FINLEY: Sure. And so I will object
6 on the basis of the expert stip to the extent that
7 the only basis of knowledge is preliminary
8 calculations or other preliminary work product
9 done in anticipation of this report.

10 Otherwise, the witness may answer.

11 A. So the answer is, I have reported one
12 regression result for the overcharge regression.

13 And the bases for that regression are all
14 disclosed in my report, everything I've relied on,
15 all the data I've relied on, all the modeling I've
16 relied on, and that's what's presented in Table 4.

17 Q. And are you unwilling to answer the
18 question whether you -- whether your model is
19 sensitive to using one damages period?

20 MR. FINLEY: Objection, form, lack of
21 foundation. Also objection on the basis of the
22 expert stip.

23 A. I think I've answered your question. My
24 answer -- I won't repeat the answer I just gave
25 because I've given it two or three times now. I

1 really don't have anything else to add.

2 Q. Your answer didn't state whether or not
3 your regression model was sensitive to the
4 decision to use one damages period.

5 And I'm just trying to understand, is that
6 a question you're not answering based on Counsel's
7 objections? Is it a question you don't know the
8 answer to?

9 It's unclear to me from the record right
10 now which is which.

11 MR. FINLEY: It's a broad question. But
12 also, are you asking him about something in his
13 report or are you just asking this general
14 proposition that may touch on preliminary work
15 product?

16 MR. SCHWINGLER: I'm asking him whether
17 his overcharge regression is sensitive to using
18 one damages period. That's the question.

19 Look, this is your opportunity to let your
20 expert defend his work. If you're going to
21 instruct him not to do that, then the record is we
22 asked the question, "Is your model sensitive?"

23 Plaintiff counsel instructed the witness
24 not to answer.

25 MR. FINLEY: Now you're mischaracterizing

1 the record. And I disagree with that
2 characterization of the record. And there would
3 be a lot of criticism to this line of questioning
4 that I would level that maybe doesn't make sense
5 to go into right now on the record, but we can.

6 MR. SCHWINGLER: If you're not instructing
7 him not to answer, then I want an answer to the
8 question.

9 MR. FINLEY: Part of the problem is the
10 question is very broad and vague and ambiguous;
11 and therefore, it's unclear to what degree this
12 question will touch on preliminary work product.

13 But it seems that it may well, since -- I
14 mean, is there anything labeled "sensitivity
15 analysis" in the report you're asking him about?

16 MR. SCHWINGLER: I have not seen it.

17 MR. FINLEY: Then that . . .

18 BY MR. SCHWINGLER:

19 Q. Dr. Williams, do you understand what I
20 mean by -- when I ask you whether your model is
21 sensitive to a certain choice you make and how you
22 constructed the model?

23 A. I would say it's very vague because a
24 model can be sensitive for different reasons. As
25 I've said, my regression results are shown in

Table 4, period.

Q. I'm going to ask the question one more time.

MR. SCHWINGLER: Blaine, you're going to have to be clear on what you're doing or not doing. And I'm not going to ask it again. We'll reserve our rights to come back and get an answer to the question --

MR. FINLEY: We always reserve our rights. Absolutely.

Q. Just one more time. And I will move on after this.

Dr. Williams, is your overcharge regression sensitive to your decision to designate one damages period covering 2009 through June 2018?

MR. FINLEY: Sure. And I'll object on the basis of the expert stipulation, among other reasons, because this question seems -- is vague and ambiguous and also seems to be directed toward preliminary calculations and work product that may or may not exist, since it has not been specified what analysis, in particular sensitivity analysis, in the report is being referenced, since Counsel will not identify any sensitivity analysis that

1 this question pertains to.

2 But if outside of preliminary analysis
3 work product there's an answer to this question,
4 Dr. Williams may answer.

5 A. I really don't have anything else to add
6 to my prior answers.

7 Q. All right. And what happens to the
8 results in your overcharge regression if you split
9 the damages period into smaller segments?

10 MR. FINLEY: Same objection. This is
11 clearly -- objection on the basis of the expert
12 stip. This seems clearly directed toward
13 preliminary work product analysis.

14 MR. SCHWINGLER: Is that an instruction
15 not to answer?

16 MR. FINLEY: Yes, unless there's something
17 in the report that touches on this. I mean, is
18 there something in the report you're referencing?

19 MR. SCHWINGLER: I have not seen anything
20 in the report on this.

21 MR. FINLEY: Well, then is your goal to
22 pierce the expert stip?

23 MR. SCHWINGLER: I'm asking a question.
24 You can decide whether you want to instruct the
25 witness not to answer.

1 MR. FINLEY: Then I will because I don't
2 understand how this isn't directed toward just
3 going right around or piercing the expert stip.

4 MR. SCHWINGLER: I'm not going to debate
5 this point on the record any more. You just make
6 a decision whether you're instructing the witness
7 not to answer the question or not, and we'll deal
8 with it later.

9 MR. FINLEY: I definitely am making that
10 decision.

11 MR. SCHWINGLER: And you're instructing
12 him not to answer?

13 MR. FINLEY: Like I've put on the record a
14 number of times, I'm instructing the witness not
15 to answer to the extent that the answer is
16 exclusively or really is intertwined with
17 preliminary work product.

18 And as per our back-and-forth, that would
19 seem to be a binding instruction, since you've
20 refused to identify anything concrete specifically
21 in the report that is a sensitivity analysis that
22 you're asking a question about.

23 MR. SCHWINGLER: And I'm not refusing to
24 do anything. You and I both know it's not in the
25 report. I've been clear about that.

1 Why don't I ask a few questions and then
2 we'll move on.

3 BY MR. SCHWINGLER:

4 Q. Dr. Williams, isn't it true that your
5 report contains no sensitivity analysis of your
6 overcharge regression?

7 MR. FINLEY: Objection, form.

8 A. Well, I suppose it depends on what you
9 think "sensitivity analysis" means.

10 But my report contains -- with respect to
11 the overcharge regression, it contains a single
12 overcharge regression. And my report explains all
13 of the data and modeling choices and variables on
14 which I'm relying to perform the regression that's
15 shown in Table 4.

16 Q. Your report contains no -- it does not
17 report any results for your regression where the
18 damages period has been split into smaller
19 segments. Correct?

20 MR. FINLEY: Objection, form.

21 A. That is correct. There is a single dummy
22 variable for the damages period in the overcharge
23 regression in Table 4. There is a single dummy
24 variable for the period January 2009 through
25 June 2018.

1 So we start with a regression that
2 estimates that pass-through elasticity -- so
3 that's a regression that in general form would
4 have a retail price on the left and a wholesale
5 price and other control variables on the right.
6 And then that would give us that pass-through
7 elasticity.

8 And then we would multiply the
9 pass-through elasticity by that price-cost ratio.
10 So for example, in the first row for [REDACTED], you
11 see the pass-through elasticity is [REDACTED] and you
12 see the price-cost ratio is [REDACTED] percent.

13 So we multiply the [REDACTED] by the
14 [REDACTED] percent and that yields the pass-through rate
15 which is the [REDACTED] percent number.

16 Q. How does a pass-through rate help
17 determine whether a given class member paid an
18 overcharge?

19 A. Well, it's part of the analysis.
20 Obviously I have a whole section called "Common
21 Impact Analysis."

22 But the pass-through rate is showing
23 whether or not the distributor shown in Table 5
24 did or did not pass through price increases that
25 they paid for pork products in the prices that

1 they charged their customers, in particular, the
2 class members.

3 Q. If I took, let's just say, a REDACTED
4 customer, to calculate that customer's overcharge
5 on purchases from REDACTED do you take the
6 10.3 percent overcharge from your overcharge
7 regression and multiply it by the pass-through
8 rate for REDACTED?

9 MR. FINLEY: Objection, form, scope.

10 A. I think the answer to your question is
11 yes, if I heard it right.

12 Maybe it would help if we just read the
13 last sentence in Paragraph 256. I'll just read
14 it. "These estimated pass-through rates can be
15 multiplied by the estimated overcharge percentages
16 discussed above to determine the overcharge
17 percentages for CIIPP Class Members."

18 Q. And the overcharge percentage as discussed
19 above in that sentence, is that a reference to the
20 10.3 percent from your overcharge regression?

21 A. Yes. That is correct.

22 Q. So I'd like to -- how does pass-through
23 elasticity relate to pass-through rate?

24 A. Well, I thought I just explained that.
25 But let's do it again.

1 So the pass-through elasticity -- do you
2 see that in Table 5? For example, for REDACTED, do
3 you see the REDACTED?

4 Q. Yes.

5 A. So that's the number that comes out of the
6 regression. So remember, we're regressing -- it
7 is a log-log regression. So it's an elasticity.

8 So the regression is giving us back that
9 REDACTED number. We then multiply -- to get the
10 pass-through rate, we multiply the pass-through
11 elasticity by that variable called the price-cost
12 ratio.

13 So as I said earlier, if we take the
14 pass-through elasticity for REDACTED of REDACTED,
15 multiply it by the cost-price ratio of
16 REDACTED percent, that's what gives us the pass-through
17 rate of REDACTED percent.

18 Q. So let's just stay with REDACTED for a
19 minute. If the average direct -- sorry.

20 If the direct purchaser overcharge from
21 your overcharge regression is 10.3 percent and
22 REDACTED has a pass-through elasticity of REDACTED and a
23 pass-through rate of REDACTED percent, would you
24 expect to see overcharges of close to REDACTED percent
25 for REDACTED customers?

1 And their quote out of their Michigan Law
2 Review article was, "modern cartels are more
3 focused on monitoring, communication, and
4 redistribution so as to prevent cartels" -- I'm
5 sorry -- "so as to prevent breakdowns in cartel
6 discipline than on some punishment."

7 Q. In order to successfully monitor and
8 punish noncompliance with a cartel, does the
9 information the members of the cartel use for
10 monitoring have to be accurate?

11 MR. FINLEY: Objection, form, lack of
12 foundation, calls for speculation.

13 A. My report doesn't offer a specific opinion
14 about that.

15 Remember that the point to this whole
16 discussion is that -- remember we're in section --
17 that we're in Subsection III.B. of the report,
18 which asks the question, did the defendants take
19 actions that were against their unilateral or
20 independent self-interest but for the existence of
21 a conspiracy.

22 So the analysis that's in these paragraphs
23 is about that. It's about did the firms in fact
24 engage in conduct that will be against their
25 unilateral self-interest but for the existence of

1 a conspiracy.

2 The analysis in these paragraphs is not
3 about the optimal way to run a cartel. And my
4 report doesn't have any specific opinions about
5 the optimal mechanisms firms use to run cartels
6 other than, as I said, it generally -- this
7 discussion that we're looking at right now in
8 Paragraph 186 about generally what do cartels
9 attempt to do.

10 And again, with the important contribution
11 from Professor Kovacic, et al., about what modern
12 cartels attempt to do.

13 Q. You're not offering an opinion that
14 Agri Stats in fact facilitated monitoring and
15 enforcement by the defendants in this case. Is
16 that fair?

17 MR. FINLEY: Objection, form, may
18 mischaracterize prior testimony.

19 A. I don't believe my report offers an
20 opinion that says that. The discussion of
21 Agri Stats really is in the vein I just described
22 earlier. It's about whether or not there's
23 evidence that the firms took actions that were
24 against their unilateral self-interest in the
25 absence of an agreement.

1 Q. Is it your opinion that Agri Stats
2 facilitated collusion between defendants?

3 MR. FINLEY: Objection, form, scope.

4 A. My report doesn't offer a specific opinion
5 that says that.

6 Again, we talked about Paragraph 183. So
7 whether or not someone would regard 183 as
8 evidence that Agri Stats facilitated an alleged
9 agreement, I suppose that would be up to the
10 person reading Paragraph 183. I certainly stand
11 by what's in Paragraph 183.

12 Q. You say in Paragraph 185, you refer to
13 "information sharing through Agri Stats."

14 And then the second sentence says, "Such
15 information sharing can facilitate collusion
16 because the detailed knowledge that Defendants
17 gained regarding their competitors' pricing and
18 production decisions is the type of information
19 that would be useful for coordinating price
20 increases and/or production decisions, including
21 production cuts, among firms."

22 Did I read that correctly?

23 A. I believe so.

24 Q. So can you give me an example in this case
25 where two or more defendants used information from

1 Agri Stats to coordinate their production of pork?

2 A. I don't believe --

3 MR. FINLEY: Objection, form.

4 A. I don't believe my report offers such an
5 opinion. Again, the point to these paragraphs is
6 to ask the question did -- particularly in the
7 context of information exchanges related to
8 Agri Stats, did the firms engage in conduct that
9 was against their unilateral self-interest in the
10 absence of an agreement. That's what's being
11 discussed here.

12 My report doesn't offer a specific opinion
13 about the -- about your specific question.

14 Q. So when your report says Agri Stats would
15 be useful for coordinating production decisions,
16 you're not -- that's a sort of hypothetical
17 observation? You're not opining that in fact
18 defendants used Agri Stats to coordinate
19 production?

20 MR. FINLEY: Objection, form.

21 A. I don't know that I'd agree with the way
22 you're stating that.

23 The whole discussion of Agri Stats is, in
24 my opinion, demonstrating that the firms --
25 including Agri Stats itself, as discussed in

Paragraph 183 -- that they did take actions that are against their unilateral self-interest in the absence of an agreement.

And then that's summarized really in Paragraph 188 about what are the three primary takeaways from the type of information that Agri Stats is collecting and then disseminating.

And again, this goes back to the comments made in the article by Professor Kovacic, in the book by Professors Marshall and Marx, and then in the document cited in Footnote 190, which was a statement by the United States to the competition committee about information exchanges that are likely to be highly problematic from an antitrust perspective, which I think certainly in my opinion the Agri Stats data certainly falls into that category.

Q. Take a look at Paragraph 57 of your report and Table 1 that comes immediately after it.

THE VIDEOGRAPHER: Counsel, you said Paragraph 167?

MR. SCHWINGLER: Paragraph 57, five seven. It's on page 25.

Q. Paragraph 57 and Table 1 discuss "International Trade in Live Pigs." Is that